FILE COPY

In The

SUPREME COURT OF THE UNITED STATES

E. A. DAWLEY, JR.

Petitioner

v.

CITY OF NORFOLK, VIRGINIA, a
Municipal Corporation, et als

Respondents

PETITION FOR WRIT OF CERTIORARI

To

UNITED STATES COURT OF APPEALS,
Fourth Circuit

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In The

SUPREME COURT OF THE UNITED STATES

E. A. DAWLEY, JR.
Petitioner

vs.

City of Norfolk, Virginia, a municipal corporation; Thomas F. Maxwell, City Manager, City of Norfolk, Virginia; Calvin H. Dalby, Director of Public Safety, City of Norfolk, Virginia; S. C. Morrissette, Director of Public Works, City of Norfolk, Virginia,
Respondents

PETITION FOR A WRIT OF CERTIORARI

To The

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

E. A. Dawley, Jr., your Petitioner, prays that a writ of certiorari issue to review the final decree of the United States Court of Appeals for the Fourth Circuit, entered, filed and dated on the 15th day of October 1958, which decree affirmed a decree of the United States District Court for the Eastern District of Virginia at Norfolk, dismissing your Petitioner's Complaint on the merits.

OPINIONS BELOW

The opinion of the District Court is reported in 159 F. Supp. 642, and is also printed in the record (Appellant's Appendix, p. 36-A). The per curiam opinion of the Court of Appeals has not been officially reported, to the best of your Petitioner's knowledge, but is printed in the record (pg. 8), and in the Appendix to this petition (pg. 1).

JURISDICTION

The decree of the Circuit Court of Appeals is dated and was entered on October 15, 1958, a copy of which is appended to the record (record pg. 9) and is printed in the Appendix to this petition (pg. 3-A). The decree of the District Court is printed in the Record (Appellant's Appen. pg. 47-A).

An order dated January 13, 1959, was entered in this cause by the Honorable Earl Warren, Chief Justice of the United States, extending the time for filing a petition for writ of certiorari to and including January 30, 1959.

Jurisdiction to review this case upon writ of certiorari is conferred upon this Court by 28 U. S. C. 1254(1).

QUESTIONS PRESENTED FOR REVIEW ARE AS FOLLOWS

I. Does the presence and maintenance by the Appellees of signs providing for racial segregation of attorneys and other persons in attendance at the Courthouse, violate the federal constitutional and statutory rights of Appellant and other Negro attorneys, as guaranteed by the 14th Amendment to the United States Constitution and 42 U. S. C. 1981, in that the presence and maintenance of said racial signs deny to them the equal protection of the law, violate their privileges and immunities as citizens of the United States, deprive them of their property without due process of law, and subject them to punishment, pains and penalties unlike those to which White persons and attorneys are subjected, i.e., does

the Complaint of Appellant (Record, Appellant's Appendix, pg. 1-A) state a claim against the Respondents, or any of them, upon which relief can be granted?

II. Should the court take judicial notice of the facts contained in Appellant's Motion for Judicial Notice (Record, Appellant's Appendix, pg. 9-A)?

III. Whether the District Court had jurisdiction of the case and if so, whether the court should, in its discretion, exercise the same in a case of this type?

IV. May Appellant's action be maintained as a class action?

V. Do the Respondents have such authority and control over the courthouse building that makes them responsible for the presence and maintenance of said racial signs, and gives them the power to remove same?

PROVISIONS OF LAW INVOLVED

This case involves the provisions of law cited below with the respective volumes and pages where they may be found in the official editions; the verbatim texts or pertinent portions of which are set forth on that page of the appendix to this petition indicated after said citations:

FEDERAL LAW

14th Amendment to United States Constitution, U. S. C. United States Constitution, Amendment 14, (pg. 4-A); 42 U. S. C. 1981, Revised Statutes Sec. 1977, (pg. 4-A); 42 U.S.C. 1983, Revised Statutes Sec. 1979 (pg. 4-A); 28 U.S.C. 1331, 62 Stat 1331 (June 25, 1948) as amended by 72 Stat 415 (July 25, 1958),

(pg. 4-A); 28 U.S.C. 1343(3), 62 Stat 932 (June 25, 1948), (pg. 5-A); 28 U.S.C. 2201, 62 Stat 964 (June 25, 1948), as amended 68 Stat 890 (Aug. 28, 1954), 72 Stat 349 (July 7, 1958), (pg. 5-A); 28 U.S.C. 2202, 62 Stat 964 (June 25, 1948), (pg. 5-A); 28 U. S. C. 1254(1), 62 Stat 928 (June 25, 1948) (pg. 5-A).

LOCAL LAW

Code of Virginia (1950)

Sec. 15-686, Vol 3, pg. 578 (pg. 6-A); Sec. 15-689, Vol. 3, pg. 579 (pg. 6-A); Sec. 15-690, Vol 3, pg. 580 (pg. 7-A); Sec. 15-691, Vol 3, pg 580 (pg. 8-A); Sec. 15-693.1, Vol 3, pg. 582 (pg. 8-A; Sec. 54-42, Vol 7, pg. 338 (pg. 9-A); Sec. 58-266.4, Vol 8, pg. 138 of sup. (pg. 10-A); Sec. 58-371, Vol 8, pg. 440 (pg. 11-A); Sec. 18-327, Vol 4, pg. 245 (pg. 12-A); Sec. 18-328, Vol 4, pg. 245 (pg. 12-A).

NORFOLK CITY CHARTER, Acts of the General Assembly of Virginia (Feb. 7, 1918), Acts 1918, Chapter 34, pg. 31 et seq., sections:

Sec. 49, ch 34, pg. 52 (pg. 15-A); Sec. 50, ch 34, pg. 53, (pg. 16-A); Sec. 52, ch 34, pg. 54, (pg. 17-A); Sec. 59, ch 34, pg. 54, (pg. 19-A).

CODE OF CITY OF NORFOLK (official editions found in Charter and Code of the City of Norfolk, Virginia (1950), sections:

Sec. 1-15, pg. 133, (pg. 14-A); Sec. 2-62(7), pg. 158, (pg. 14-A); Sec. 34-1, pg. 593, (pg. 14-A).

BUILDING CODE OF THE CITY OF NORFOLK, section 2002.1, official edition in separate pamphlet entitled Building Code of the City of Norfolk, Va. 1957, section 2002.1 on page 251, (pg. 15-A).

STATEMENT OF THE CASE

The Appellant, Plaintiff below, is a citizen of the United States of America and the State of Virginia, and is a domiciliary and bona fide resident of Norfolk, Virginia. He is licensed by the State of Virginia, is authorized, and is in all respects qualified to practice the profession of law in all courts of the State of Virginia; and is now actively engaged in the practice of law in the State of Virginia, especially in Norfolk, Virginia, where he maintains his law offices. The appellant is a Negro. (Affidavit, Record, Appellant's Appendix, Page 16-A)

The Appellees, Respondents below, are a municipal corporation and its chief administrative officials, all of whom are members of the Caucasian race. The City of Norfolk, Virginia, pursuant to state law, provides, maintains, and owns in fee simple absolute a certain courthouse building located in said City, in which is contained solely (a) all the Virginia State Courts of general jurisdiction having jurisdiction of all causes properly cognizable in Norfolk, Virginia, numbering four (4) separate courts; (b) offices for the judges of said courts, all of whom are members of the Caucasian race; (c) a restroom for the exclusive use of two of the judges, and (d) four public restrooms.

The lettering on and, in some cases, over the doors of the four public restrooms is as follows:

"WHITE WOMEN — REST ROOM"

"COLORED WOMEN — REST ROOM"

"REST ROOM (WHITE MEN)"

"REST ROOM (COLORED MEN)"

Appellant complained to the Appellees on several occasions concerning the presence of the signs and requested that the signs be removed because he thought that their presence and maintenance was unlawful and humiliating to Negro attorneys; but to no effect.

The Appellant, suing for himself and allegedly on behalf of other Negro Attorneys at law practicing in Norfolk, Virginia, filed a Complaint (Record, Appellant's Appendix page 1-A) against the Appellees (under 42 U. S. C. 1983; 28 U. S. C. 1331, 1343 (3), 2201 and 2202) alleging, among other things, that the Appellees were maintaining said racial signs, that the presence and maintenance of said signs were humiliating to Negro attorneys and in violation of the 14th Amendment to the Constitution of the United States and Section 1981 of Title 42 of the United States Code, in that the presence and maintenance of the signs deprived Negro attorneys of their property without due process of law, denied to them the equal protection of the law, and subjected them to punishment, pains and penalties unlike those to which white persons and attorneys are subjected. Appellant's complaint prayed for the entry of a declaratory judgment declaring that the presence and maintenance of said signs was unlawful and unconstitutional, and for an injunction restraining and enjoining the Appellees from maintaining said signs. Appellant also filed a motion asking the court to take judicial notice of certain facts (Record, Appellant's Appendix, page 9-A).

The Answer (Record, Appellant's Appendix, page 28-A) and other responsive pleadings, including a

Motion to Dismiss Appellant's Complaint, (Record Appellant's Appendix, page 24-A) admitted practically all of the substantial evidentiary facts. There was and is thus no material evidentiary fact in dispute, and the only issues in this case are issues of law. Thus both parties filed in the District Court motions for summary judgment (Record, Appellant's Appendix, page 26-A and Appellees Appendix, page 1-A). Appellant also filed a motion to strike Appellees' Answer (Record, Appellant's Appendix, page 35-A). After the submission of briefs and oral argument, the District Court overruled Appellant's Motion for Summary Judgment and Motion to Strike Appellees' Answer, sustained Appellees' Motion to Dismiss Appellant's Complaint, treating same as a Motion for Summary Judgment, and entered an Order dismissing Appellant's Complaint.

The District Court held that: I. It had jurisdiction of the case; II. The presence and maintenance of the racial signs was not unconstitutional and did not violate any rights of petitioner; III. It was not proper for the Court to take judicial notice of the facts requested by Petitioner; IV. The Appellees were not solely responsible for the presence and maintenance of the racial signs V. That this action could not be maintained as a class action; and, VI. That it was unnecessary to decide the question of whether the court should in its discretion decline to entertain jurisdiction of this case, in the light of its decisions on the foregoing questions.

On appeal, the Circuit Court of Appeals affirmed the District Court solely on the one issue not decided by the District Court, the Court of Appeals holding

that "Whether or not the Federal Court should take cognizance of the case and grant the relief prayed was within the sound discretion of the District Judge sitting in a court of equity. The matter was one which affected the internal operations of the court of the State and within its power to regulate. Under these circumstances, interference on the part of the Federal court was not required and the action of the District Judge in dismissing the case was in accord with the principles laid down in Pennsylvania v Williams, 294 U. S. 176, 185."

REASONS FOR GRANTING THE WRIT

The primary meritorious issue in this cause is whether the presence and maintenance by governmental officials of signs providing for racial segregation of attorneys and other persons in attendance in a courthouse building violate the rights of Negro attorneys guaranteed under the 14th amendment and 42 U. S. C. 1981.

Your petitioner says that a writ should be granted for the following reasons:

I. There is involved in the aforesaid issue an important question of Federal constitutional rights seriously affecting the integrity of the judicial system itself, the very source of law and justice.

II. The court of Appeals has, in effect, approved the decision of the District Court on this important federal question, which specific question has not been, but should be decided by this Court.

III. The Court of Appeals has, in effect, approved the decision of the District Court, which held that the maintenance of said racial signs was not a viola-

tion of federal rights, which decision is not in accord and is in conflict in principal and spirit with applicable decisions of this court as hereinafter set forth.

IV. The decision of the Court of Appeals is in conflict with the decision of the Court of Appeals, 10th Circuit, on the same or an analogous matter, as hereinafter set forth.

V. The Court of Appeals has applied the principles of Pennsylvania v Williams, supra, in a novel and clearly erroneous manner and to inapplicable circumstances. Further, while purporting to sustain and affirm the District Court, the opinion and action of the Court of Appeals is not responsive to the opinion and action of the District Court. The recital of the Court of Appeals that the District Judge dismissed the complaint "without prejudice to the right of the Plaintiff to seek an appropriate remedy in the State Court," (on which recital it purportedly based its decision), finds no support in the decision and action of the District Court or in any part of the record. Thus, the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

ARGUMENT

IN SUPPORT OF REASON I.

It is submitted that suggestions of racial distinction in a court house is sui generis, and submit that had the Supreme Court held that racial distinctions made by governmental officials were lawful with reference to schools, transportation, housing and employment, it would nevertheless have held that the

slightest suggestion of racial distinction in a court of law was most reprehensible, unconstitutional and unlawful. Would it not be ironical if the courts, having condemned and enjoined segregation and discrimination in other areas, would hold that racial segregation and discrimination were lawful and permissible in its own courthouse; the fountain from which such decrees and justice spring. The adverse foreign policy potential of this matter can be considered by imagining some communist agency distributing throughout the world pictures of this courthouse and other courthouses in the South decorated with racial signs. Even in dictatorial countries, where there are in fact no fair trials, as we are blessed to have here, great efforts are made that nothing shall appear to suggest the lack of fairness. It is submitted that the presence and maintenance of racial signs in a courthouse destroys the reverence and respect we desire of our judicial system on the part of the public and the world.

IN SUPPORT OF REASONS II, III, AND IV.

The theory of Appellant's case is set forth in his Motion requesting the Court to take judicial notice of certain facts, (Record-Appellant's Appendix, page 9A). The instant court has decided that segregation is generally interpreted to denote that the Negro is inferior.—Brown et al. vs. Board of Education of Topeka et al. 347 U. S. 483. Therefore, the presence of the instant signs conveys the impression that the persons responsible for the signs maintenance (whom the public believes to be the judges) consider Negroes, including Negro Attorneys, to be inferior. This belief

on the part of the public adversely affects the prestige of Negro Attorneys upon which their ability to earn substantially depends.

It is submitted that the instant case requests the logical extension of the doctrines and theories propounded and implicit in McLaurin vs. Oklahoma State Regents, U. S. Supreme Court, 339 U. S. 637, and Sweatt vs. Painter et al, U. S. Supreme Court, 339 U. S. 629, in which cases the Supreme Court held that the State must give equal treatment to Negro students studying in the state institutions of higher learning, and refrain from segregating or discriminating against them, so that they might well learn their professions. The instant case asks that Negroes be permitted to well practice their professions unfettered by discriminatory conduct and unequal treatment on the part of governmental officials. It is submitted that this case is controlled by A. E. McDonald v. George D. Key et al. 125 Fed. Sup 775, U. S. Court of Appeals, 10th Circuit, 224 F 2nd 608, certiorari denied by U. S. Supreme Court, 350 U. S. 895, which decision of the 10th Circuit is in conflict with the decision in the instant case. The instant case further requests that the doctrine implicit in the aforesaid cases and the case of Brown v. Board of Education, et als., supra, be applied a fortiori to the facts here involved. This Court should review this case since it has never ruled on the validity of racial distinction displayed in a courthouse, the repository of justice. However, the determinations of the inferior courts on the instant question are in conflict in principle and spirit with the holdings of this Court in the aforesaid cases.

IN SUPPORT OF REASON V.

The Court of Appeals assigned, as the basis for affirming the District Court, the correctness of the District Court's decision that it should decline to take cognizance of this case. Whereas, in fact, the District Court did take cognizance of the case, adjudicated it on its merits, but did not decide the sole question on which it was purportedly affirmed, indicating that a decision on same was unnecessary.

The Court of Appeals in basing its decision on the doctrine of Pennsylvania vs. Williams, supra, has in effect held that a Federal Court can, in its discretion, properly refuse to adjudicate a case where there is involved clearly illegal and unconstitutional conduct on the part of a State itself and its officials which violates the rights of citizens, on the sole grounds that such illegal conduct "affected the internal operations of the court of the State and within its power to regulate." This, to your petitioner, is analogous to a court holding that it will not punish or enjoin a crime because it is the criminal's private business and an injunction might embarrass the criminal. There is nothing in Pennsylvania vs. Williams to support this dangerous theory, or to support the determination that that case is applicable to the facts in the instant case.

Respectfully submitted,

E. A. DAWLEY, JR., Petitioner